

**CITY OF MANITOWOC TID NO. 21
DEVELOPMENT AGREEMENT WITH
WEBSTER FAMILY HOLDINGS, LLC**

THIS AGREEMENT (hereinafter called the "Agreement") made as of the ___ day of _____ 2019, by and between The City of Manitowoc (hereinafter called the "CITY") and Webster Family Holdings, LLC (hereinafter called the "DEVELOPER"). The CITY and DEVELOPER may collectively be referred to as the "PARTIES."

WITNESSETH:

WHEREAS, DEVELOPER seeks to construct the Project defined below on a parcel of land known as Lot 2 of Certified Survey Map, Volume 33, Page 199, Document #1195930, City of Manitowoc, Manitowoc County, Parcel 052-449-006-031.00, more specifically described as and shown on Exhibit A (the "Property"); and,

WHEREAS, DEVELOPER will invest a total of approximately \$12.5 million on the Property including building construction, equipment purchases, site preparation, and soft costs. Construction will be for a new, state-of-the-art, 118,000 square foot manufacturing facility. The estimated construction cost is approximately \$8.2 million (the "Project"). The purpose of the Project is to house Red Line Plastics, LLC and Dowco Powersports, LLC operations to accommodate increased sales, solidifying the DEVELOPER's commitment to its Manitowoc location and resulting in job creation; and,

WHEREAS, the Property is located in proposed Tax Increment Finance District No. 21 ("TID 21"), and planned public investments identified in the Project Plan for TID 21 include site development and development project contributions. The use of Tax Incremental Financing is necessary for the Project to take place, as the Project is impacted by extraordinary development costs due to site conditions requiring substantial grading and site preparation; and,

WHEREAS, the CITY created TID 21 to promote industrial development and to accommodate growth of existing manufacturing businesses in the community along with new development, creating tax base and employment opportunities for the community; and,

WHEREAS, the completed Project is anticipated to result in additional economic activity and increased property values throughout TID 21.

NOW, THEREFORE, in consideration of the promises and obligations set forth, it is mutually agreed between the PARTIES as follows:

- I. **PROPOSED PROJECT SCOPE AND CONSTRUCTION.** DEVELOPER agrees to construct the Project including an approximately 118,000 square foot manufacturing facility and specialized equipment to support continued business growth in accordance with this Agreement. The total Project costs will be approximately \$12.5 million with an

estimated construction cost of \$8.2 million. The assessed value increase is estimated to be \$8.2 million upon completion.

- A. The DEVELOPER shall complete the Project (which shall be deemed achieved by the delivery of a certificate of occupancy or occupancy permit for any portion of the building included in the Project and constructed on the Property) by December 31, 2019 (the "Completion Date") in accordance with site and building plans as approved by the CITY.
- B. The CITY will cooperate and use reasonable efforts with respect to any and all permits necessary for completion of the Project.
- C. The DEVELOPER shall comply with all applicable federal, state, and municipal codes throughout the Project, including submitting site plans and obtaining applicable permits.
- D. The Preliminary Concept Plan for the Project (hereinafter "Concept Plan") is attached as Exhibit "B" and is incorporated by reference to this Agreement. By execution of this Agreement, the PARTIES expressly approve the Concept Plan. The CITY or the DEVELOPER may at any time propose modifications to the Concept Plan subject to the agreement of the CITY and the DEVELOPER. All site and building plans are subject to review and approval by the CITY for compliance with federal, state and municipal code requirements.
- E. The time for performance of any term, covenant, or condition of this Agreement shall be extended by any period of unavoidable delays. In this Agreement, "unavoidable delays" means beyond the reasonable control of the party obligated to perform the applicable term, covenant, or condition under this Agreement and shall include, without limiting the generality of the foregoing, delays attributable to adverse environmental conditions (such as contaminated soil or groundwater), adverse weather conditions, acts of God, any other party in this Agreement, strikes, labor disputes, governmental restrictions, court injunctions, riot, civil commotion, acts of public enemy and casualty or delay in obtaining any necessary permit from any governmental agency.

II. FINANCIAL ASSISTANCE

- A. Beginning in 2021 (based on 2020 real estate taxes) and continuing each year thereafter until the expiration of the Payment Term (as defined below), CITY shall reimburse the DEVELOPER for 95% of the Annual TIF Increment Revenue paid to TID 21 for the Property. This annual reimbursement shall be known as the "Annual TIF Payment." The CITY shall continue the Annual TIF Payments until the earlier of (the "Payment Term"): (a) the expiration of TID 21, or (b) the cumulative value of the Annual TIF Payments paid to DEVELOPER equals ~~\$2,240,000~~ 2,000,000 (the "Total Incentive"), which is based on the extraordinary development costs.[±] The

[±] ~~Note to Draft: Based on the City's methodology in calculating the \$1.64M incentive, the incentive would be the~~

CITY shall take no action to terminate or dissolve TID 21 prior to December 31, 2039, unless the Total Incentive has been fully paid to the DEVELOPER. For the avoidance of doubt, the cumulative value of the Annual TIF Payments shall not exceed the Total Incentive.

- B. This financial assistance plan includes any and all further improvements to the Property during the Payment Term including any additional building improvements or development on the Property that generates Annual TIF Increment Revenue for TID 21 over the Base Year Taxes (as defined below).
- C. The Annual TIF Payment shall be 95% of the amount calculated by subtracting the Base Year Taxes from the actual real property taxes paid on an annual basis starting with the December 2020 tax bill. The “Base Tax Value” is the 2019 assessed real estate value for the Property, which is \$0. The actual taxes paid on the Base Tax Value is defined to be the “Base Year Taxes.” Real property taxes for purposes of this formula, do not include any special assessments, special taxes, or special charges, and personal property taxes are excluded from this calculation.
- D. Each year, the Annual TIF Payment will be made on August 15 following the CITY receiving proof from DEVELOPER that the annual real estate and personal property tax bills for the Property have been paid in full, whether in one payment or in installments as allowed under City law.

III. DEVELOPER’S TRANSFER RESTRICTIONS AND OBLIGATIONS

- A. DEVELOPER shall be prohibited from selling the Property to an entity which is exempt from real estate taxes, without the CITY’s consent.
- B. Until completion of the obligations under the Sections I and II above, there shall be no sale of the Property, nor any assignment of rights or obligations under this Agreement, without CITY consent, which shall not be unreasonably withheld. This statement shall not prohibit mortgages, leases or easements, which leave DEVELOPER liable to CITY under this Agreement.

IV. OTHER RIGHTS AND REMEDIES.

- A. **Termination and Remedies.** Except as otherwise provided in this Agreement, in the event of any default in or breach of this Agreement, such party shall, upon written notice from any other party, proceed promptly to ensure or remedy such default or breach, and, in any event, within sixty (60) days after receipt of such notice unless such default or breach cannot, with reasonable diligence, be cured within such period in which case said defaulting party shall commence such cure within such period and diligently proceed to cure such default. In case such action is not taken or not

~~same even if the property did not require significant pre-construction site work. In other words, the \$1.64M does not seem to be accounting for the significant site work costs that will need to be incurred by Developer (or any other purchaser of the property). As a compromise, the Developer is proposing a \$2.24M incentive.~~

diligently pursued, or the default or breach shall not be cured or remedied within a reasonable time, the aggrieved party may institute such proceedings to compel specific performance by the party in default or breach of its obligation.

Completion of the development in accordance with the terms and conditions of this Agreement is the essential and unique consideration for the obligations of the DEVELOPER and the CITY; accordingly, the CITY and the DEVELOPER shall, in the event of legal proceedings, seek remedies to compel the specific performance of the defaulting party as the only adequate remedy and shall not seek damages in lieu of specific performance unless specific performance is legally unavailable, in which event the CITY and the DEVELOPER may seek damages as authorized. No other remedies for the PARTIES to this agreement exist outside of this Agreement.

- B. The CITY and the DEVELOPER shall have the right to institute such actions or proceedings as they may deem desirable for effectuating the purpose of this Agreement; provided that any delay in instituting or prosecuting any such actions or proceedings or otherwise asserting such rights, shall not operate as a waiver of such rights to, or deprive it of or limit such rights in any way (it being the intent of this provision that a party should not be constrained, so as to avoid the risk of being deprived of or limited in the exercise of any remedy because of concepts of waiver, laches or otherwise, to exercise such remedy at a time when it may still hope otherwise to resolve the problems involved); nor shall any waiver in fact made with respect to any specific default, be considered or treated as a waiver of any rights with respect to other defaults or with respect to the particular default except to the extent specifically waived in writing.
- C. Except as expressly provided otherwise in this Agreement, the rights and remedies of the PARTIES to this Agreement, whether provided by law or by this Agreement, shall be cumulative, and the exercise by any party of any one or more such remedies shall not preclude the exercise of it, at the same different times, of any other such remedies for any other default or breach by any other party. No waiver made by any such party with respect to the performance or manner of time thereof, of any obligation of any other party or any condition of its own obligation under this Agreement shall be considered a waiver of any rights of the party making waiver with respect to the particular obligation beyond those expressly waived in writing and to the extent thereof, or a waiver in any respect in regard to any other rights of the party making the waiver of any other obligations.
- D. No official or employee of the CITY shall have any personal interest in this Agreement, nor shall any such person voluntarily acquire any ownership interest, direct or indirect, in the legal entities which are PARTIES to this Agreement. No official or employee of the CITY shall be personally liable to the DEVELOPER or any successor in interest, in the event of any default or breach by the CITY, or for any amount which becomes due to the DEVELOPER or its successors under this Agreement.

- E. Any written notice to the DEVELOPER shall also be delivered to the BANK (as defined below).
- F. **Developer Financing.** Notwithstanding Section III or any other provision contained herein,
- a. The DEVELOPER may transfer, assign or encumber the Property in order to secure financing for the Property and/or for construction of the Project and any refinancing thereof. Said lender may place a lien and/or mortgage on the Property, including any renewals, extensions, replacements, modifications or refinancing. Lender's mortgage and/or loan may be transferred or assigned by lender in a secondary market without prior CITY approval. In the event of a foreclosure against the DEVELOPER by lender or a deed transfer in lieu of foreclosure, lender shall assume the duties, obligations and rights of the DEVELOPER under this Agreement. In such a circumstance, lender may transfer or assign this Agreement and its accompanying duties, obligations and rights, to another developer without prior CITY approval. In any circumstance, lender shall provide reasonable notice to the CITY of such actions. This Section shall survive any foreclosure proceeding.
 - b. The DEVELOPER has certain indebtedness outstanding to PNC National Bank, its successors and/or assigns (the "BANK"), including, without limitation, indebtedness to construct the Project; to secure said indebtedness the Property will be subject to the following: (1) a mortgage in favor of the BANK, (2) an assignment of leases and rents in favor of Bank, and (3) various UCC Financing Statements against the DEVELOPER and Red Line Plastics, LLC, as the tenant occupying the PROPERTY, in favor of the BANK; and the existence of said indebtedness and liens is permitted hereunder and may be refinanced in accordance with Section IV.F.a. above.
- G. **Applicable Law, Severability and Entire Agreement.** This Agreement shall be governed by and construed in accordance with the laws of the State of Wisconsin governing agreements made and fully performed in Wisconsin. If any provision of this Agreement, or the application thereof to any persons or circumstances shall, to any extent, be invalid or unenforceable, then (unless in the judgment of the party or PARTIES thereby adversely affected such provision was a material part of the consideration for their entering into this Agreement, that without it they would not have entered into this Agreement) the remainder of this Agreement or the application of such provision, or portion thereof, and each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law. This Agreement sets forth the entire understanding between the CITY and the DEVELOPER with respect to its subject matter, there being no terms, conditions, warranties or representatives with respect to its subject matter other than that contained herein. This Agreement shall be binding upon and shall inure to the benefit of the PARTIES hereto, their respective successors and assigns.

- H. **Amendments to Agreement.** This Agreement may not be changed orally, but only by agreement in writing and signed by the PARTIES hereto.
- I. **Third Parties.** Except as expressly provided otherwise in this Agreement, the provisions of this Agreement are for the exclusive benefit of the PARTIES hereto and not for the benefit of any other persons, as third party beneficiaries or otherwise, and this Agreement shall not be deemed to have conferred any rights, expressed or implied, upon any other person.
- J. **No Partnership Created.** This Agreement specifically does not create any partnership or joint venture between the PARTIES hereto, or render any party liable for any of the debts or obligations of any other party.
- K. **Formalities and Authority.** The PARTIES hereto represent and warrant that they are validly existing and lawful entities with the power and authorization to execute and perform this Agreement. The headings set forth in this Agreement are for convenience and reference only, and in no way define or limit the scope of content of this Agreement or in any way affect its provisions.
- L. **Notices and Demands.** A notice, demand or other communications under this Agreement shall be sufficiently given or delivered if it is deposited in the United States mail, registered or certified mail, postage prepaid, return receipt requested or delivered personally:

To DEVELOPER:

Webster Family Holdings, LLC
Attn: Charles Webster, Jr.
4230 Clipper Drive
Manitowoc, WI 54220

With a required copy to:

Godfrey & Kahn, S.C.
Attn: Nicholas J. Vlies
200 S. Washington Street, Suite 100
Green Bay, WI 54301

To CITY:

City of Manitowoc
Attention: City Clerk
900 Quay Street
Manitowoc, WI 54220

To Bank:

PNC Bank, National Association
411 E. Wisconsin Avenue, Suite 1200
Milwaukee, WI 53202
Attn: Joe Alivo

or to such other address, within the United States, with respect to a party as that party may from time to time designate in writing and forward to the other as provided in

this Section. A copy of any notice, demand or other communication under this Agreement given by a party under this Agreement to any other party under this Section shall be given to each other party to this Agreement.

M. Nonmerger and Survival. Any provision in this Agreement which has not been fully performed prior to transfer of possession shall not be deemed to have terminated, but shall, unless expressly waived in writing, survive such transfer of possession and be in force and effect until performed.

[Signature pages follow.]

DRAFT

“CITY”:

CITY OF MANITOWOC

By: _____
Justin M. Nickels, Mayor

Attest: _____
Deborah Neuser, City Clerk

STATE OF WISCONSIN)
) ss.
MANITOWOC COUNTY)

Personally came before me this _____ day of _____, 2019, the above named, Justin M. Nickels, Mayor, and Deborah Neuser, Clerk, to me known to be the persons and officers who executed the foregoing instrument and acknowledged that they executed the same as such officers by the CITY of Manitowoc’s authority.

Notary Public, State of Wisconsin
My Commission: _____

[Signature Page to City of Manitowoc TID No. 21 Development Agreement]

Exhibit A
Legal Description of the Property

Tax Parcel: 052-449-006-031.00

Lot 2, Certified Survey Map Volume 33, Page 199, Document #1195930 Manitowoc, WI
consisting of 11.11 AC+-



**Exhibit B
Concept Plan**

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Summary report:	
Litera® Change-Pro for Word 10.1.0.800 Document comparison done on 2/18/2019 8:29:30 AM	
Style name: GK Firm	
Intelligent Table Comparison: Active	
Original DMS: iw://DMS/Active/20065077/4	
Modified DMS: iw://DMS/Active/20065077/5	
Changes:	
Add	7
Delete	9
Move From	0
Move To	0
Table Insert	0
Table Delete	0
Table moves to	0
Table moves from	0
Embedded Graphics (Visio, ChemDraw, Images etc.)	0
Embedded Excel	0
Format changes	0
Total Changes:	16